

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Qiu et al.

Serial No. : 09/597,840

Cnfrm. No. : 6516

Filed : June 20, 2000

For : ENHANCEMENT OF GROWTH IN PLANTS

ATTENTION:
DIRECTOR TC 1600

Examiner:
A. Kubelik

Art Unit:
1638

REQUEST FOR RECONSIDERATION OF THE DENIAL, IN PART, OF
APPLICANTS' RENEWED PETITION UNDER 37 C.F.R. § 1.144
FOR REVIEW OF RESTRICTION REQUIREMENT

U.S. Patent and Trademark Office
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1911 South Clark Place, 7th Floor
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ATTENTION: DIRECTOR TC 1600

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Dear Center Director:

On January 22, 2003, applicants filed a Renewed Petition under 37 CFR § 1.144 ("Renewed Petition") for review of the restriction requirement imposed in the above-identified application. On June 10, 2003, a decision on the Renewed Petition ("Decision") granted in part and denied in part applicants' petition. It is specifically the portion of the decision denying applicants Renewed Petition that applicants would like reconsidered.


In the Decision, it is stated, *inter alia*, at page 3 that the Supplemental Declaration of Zhong-Min Wei under 37 C.F.R. § 1.132 "...again falls short of indicating that the different claimed embodiments are not patentably distinct." Thus, it appears that the decision to deny applicants Renewed Petition was based on the absence of an admission on the record that the various embodiments claimed (i.e., using transgenic plants transformed with nucleic acid molecules encoding different hypersensitive response elicitor proteins) are not patentably distinct. Inasmuch as applicants believe the declaration by Dr. Wei effectively made such an assertion, applicants hereby admit the following:

For purposes of achieving growth enhancement in transgenic plants, the various claimed methods which involve expression of nucleic acid molecules encoding different hypersensitive response elicitor proteins in transgenic plants, would have been obvious over one another.


In view of the above admission, applicants respectfully request that the restriction requirement, as between the embodiments covered by claims 38-51, be withdrawn.

Respectfully submitted,

Date: July 26, 2003


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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450, on the date below.	
Date 7/28/03	 Wendy L. Barry